

1 JAMES R. LANGFORD III
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3 500 Ygnacio Rd., Suite 490
4 Walnut Creek, CA 94596
5 (510) 947-0100
6 Attorney For SOLINA WALTON

7 SUPERIOR COURT OF THE STATE OF CALIFORNIA
8 FOR THE COUNTY OF MARIN

RECEIVED

OCT 21 1993

HUB LAW OFFICES

9 CHURCH OF SCIENTOLOGY)
10 INTERNATIONAL, a California)
11 not-for-profit religious)
12 corporation,)

CASE NO. 157 680

13)
14 Plaintiff,)
15)

16 vs.)

NOTICE OF MOTION TO EXPUNGE LIS
PENDENS; POINTS AND AUTHORITIES;
DECLARATION OF SOLINA WALTON IN
SUPPORT THEREOF

17)
18 GERALD ARMSTRONG; MICHAEL)
19 WALTON; THE GERALD ARMSTRONG)
20 CORPORATION, a California for)
21 profit corporation; DOES 1)
22 through 100, inclusive,)

Date:
Time:
Location:
Trial Date:

23)
24 Defendants.)
25)

26 TO PLAINTIFF CHURCH OF SCIENTOLOGY INTERNATIONAL AND TO ITS

27 ATTORNEYS OF RECORD:

28 Notice is given that on Oct 29, at 0900, or as
29 soon thereafter as the matter may be heard, in Department 1 of the
30 Superior Court of the State of California, for the County of Marin,
31 located at the Hall of Justice, Civic Center, San Rafael,
32 California, SOLINA WALTON will move for an order to expunge the
33 notice of pendency of action (lis pendens) previously recorded in
34 the official records of the County Recorder of Marin County,
35 California, as Document Number 93-062800, and for an award to
36 SOLINA WALTON of reasonable attorney's fees and costs incurred by
37 the making of this motion. The motion will be made pursuant to

1 Code of Civil Procedure section 405.30. The motion will be made on
2 the grounds that the underlying action was not brought in good
3 faith; that this is not an action affecting title to or the right
4 of possession of the property for purposes of recording a lis
5 pendens against it; and that actions for money damages will not
6 support a lis pendens.

7 The motion will be based on this notice of motion, the
8 Declarations of Solina Walton, James Langford, and J. Andrew
9 Paulson, the memorandum of points and authorities which accompanies
10 this notice, the pleadings, documents, records, and files in this
11 action and those of which the court may take judicial notice, and
12 such oral and documentary evidence as may be presented at the
13 hearing.

14 Dated: October 18, 1993

15 _____
James R. Langford III

16 **INTRODUCTION**

17 SOLINA WALTON is the wife of defendant MICHAEL WALTON and the
18 record owner of the real property on which plaintiff, Church of
19 Scientology International (hereinafter "Scientology") has recorded
20 a lis pendens.

21 The instant action is for conspiracy and to set aside
22 fraudulent transfers. Scientology seeks money damages. Scientology
23 alleges that the defendants conspired to fraudulently transfer
24 certain real and personal property from defendant GERALD ARMSTRONG
25 (hereinafter "ARMSTRONG") to defendant Walton in order to render
26 Armstrong "judgment proof". Scientology further alleges that a
27 Settlement Agreement entered into between Scientology and Armstrong

1 in 1986 as a result of a lawsuit filed in 1982 by Scientology
2 against Armstrong was breached by Armstrong, who thereby incurred
3 liability for the money damages requested by Scientology in this
4 action. It is Scientology's contention that Armstrong's motive for
5 transferring his interests in property was so that he could violate
6 the Settlement Agreement and be judgment proof. It is not clear
7 when or in what manner Armstrong is alleged to have violated the
8 Settlement Agreement. Scientology does make reference to two other
9 actions pending in Los Angeles Superior Court, (both entitled
10 Church of Scientology International v. Armstrong with respective
11 case numbers LASC# BC 052395 & LASC# BC 084642). Scientology
12 indicates in Paragraph 3 that both cases are "for breaches
13 occurring between" July 1991 and May 1992 and between August 1991
14 and June 1993, respectively. The collective demand for damages for
15 breach of contract in the actions is \$1,800,000. Presumably, it is
16 the same \$1,800,000 which Scientology has alleged as damages in the
17 Los Angeles Superior Court actions that Scientology claims are due
18 in the instant action.

19 **POINTS AND AUTHORITIES**

20 **I. SOLINA WALTON IS ENTITLED TO MOVE FOR AN EXPUNGEMENT**

21 1. C.C.P. Section 405.30 provides:

22 "At any time after notice of pendency of action has been
23 recorded, any party, or nonparty with an interest in the
24 real property affected thereby, may apply to the court in
25 which the action is pending to expunge the notice.

1 However a person who is not a party to the action shall
2 obtain leave to intervene from the court at or before
3 the time the party brings the motion to expunge the
4 notice..."

5 Solina Walton has been a holder of interest in the property since
6 October 24, 1991. A copy of the deed recorded as Document # 91-
7 069268 is attached hereto as Exhibit "A" and incorporated herein by
8 this reference.

9 **II. PLAINTIFF IS NOT ENTITLED TO FILE A LIS PENDENS**

10 Code of Civil Procedure Section 405.20 provides in pertinent part:

11 "A party to an action who asserts a real property claim
12 may record a notice of pendency of action in which that
13 real property claim is alleged..."

14 **Scientology has not asserted any property claim whatsoever in its**
15 **pleading. Plaintiff claims money damages for breach of contract and**
16 **a punitive damage money award. The new California Code of Civil**
17 **Procedure at Section 405.1 defines a "claimant" as "a party to an**
18 **action who asserts a real property claim and records a notice of**
19 **pendency of the action." The Code continues at Section 405.4, "**
20 **'Real property claim' means the cause or causes of action in a**
21 **pleading which would, if meritorious, affect (a) title to, or the**
22 **right of possession of, specific real property or (b) the use of an**
23 **easement identified in the pleading, other than an easement**
24 **obtained pursuant to statute by any regulated public utility."**
25 Emphasis added.

1 Scientology does not make any such "real property claim."
2 Rather it seems to be attempting to become a "secured judgment
3 debtor" in a judgment for money, which it has not yet obtained in
4 the pending Los Angeles Superior Court actions referenced in
5 plaintiff's complaint.

6 Plaintiff seems to suggest that its request that the alleged
7 fraudulent transaction be set aside satisfies the "title to, or the
8 right of possession of, specific real property" requirement of a
9 real property claim. Such is not the law. Any result of the setting
10 aside of an alleged fraudulent transfer in this matter would only
11 be effective as between defendants Armstrong and Walton.
12 Scientology would still have no real property claim even if the
13 court transferred the property back to Armstrong. The "affect of
14 title" intended requires that the party claims a right to title or
15 possession. In Mosely v. Superior Court (1986) 177 CA3d 672, 676,
16 223 CR 116, the court decided that even though an action may affect
17 the title or possession of real property, a party cannot record a
18 lis pendens unless he has a personal interest in the property
19 affected. In Mosely, the county had imposed resale price
20 restrictions by deed provisions for several condominiums to assure
21 ownership by persons of low and moderate incomes. These
22 restrictions were removed by the county, and the plaintiff, as an
23 interested taxpayer, sought to compel the county to rescind its
24 removal of the restrictions and recorded a lis pendens on each of
25 the affected units. The plaintiff did not claim any interest in the
26 units. **The court held that the lis pendens was properly expunged**

1 because the plaintiff did not claim any title or possessory
2 interest in the property described in the lis pendens.
3 Scientology does not have a "real property claim" within the
4 purview of the Civil Code.

5 **III. REAL PROPERTY CLAIM IS NOT A BOILERPLATE PLEADING**

6 A real property claim, as defined by the Code of Civil
7 Procedure, is not to be viewed as simply a boilerplate pleading
8 allegation. The Code at Section 405.32 burdens a claimant
9 (plaintiff in this action) with a preponderance of the evidence
10 showing:

11 "In proceedings under this chapter, the court shall order
12 that the notice be expunged if the court finds that the
13 claimant has not established by a preponderance of the
14 evidence the probable validity of the claim. The court
15 shall not order an undertaking to be given as a condition
16 of expunging the notice if the court finds the claimant
17 has not established the probable validity of the real
18 property claim."

19 Scientology cannot show that it has established by a preponderance
20 of the evidence the probable validity of its claim. Nor can it show
21 that it even has a claim.

22 It is apparent that the legislature, in formulating the new
23 Code Sections regarding recording the notice of pending action was
24 aware of the necessity of carefully monitoring the use of the lis
25 pendens notice. "Historically, the lis pendens has been used on

1 occasion as a means to cloud title to property without the expense
2 of an attachment, or to force a property owner into a settlement
3 unfairly even though the merits of the suit are doubtful. Once the
4 lis pendens is recorded, it is difficult for the owner to sell or
5 refinance his property, and in cases of economic necessity, he may
6 be forced to settle the suit, even though it is not meritorious,
7 rather than lose the property by foreclosure. Since the recordation
8 of a lis pendens is subject to an absolute privilege, the potential
9 for abuse is apparent." Real Estate Law 2d, Section 8:126, page
10 513.

11 In the instant case, Solina Walton is in the process of
12 refinancing the property which is the subject of the lis pendens
13 notice. The refinance was begun in early July 1993, weeks before
14 this lawsuit was filed. **The loan application has been approved; was**
15 **scheduled to fund on October 18, 1993 and to close on October 19,**
16 **1993. The monthly mortgage payment savings because of the refinance**
17 **is approximately \$1425.74.** Because of the lis pendens notice which
18 the title company picked up during the final title search, the
19 lender refused to go forward with the refinance. It is precisely
20 this kind of situation which the legislature attempts to prevent.

21 **IV. CONSTRUCTIVE TRUSTS AND EQUITABLE LIENS DO NOT MEET THE**
22 **REQUIREMENTS NECESSARY TO ALLOW THE RECORDING OF A LIS PENDENS**

23 Plaintiff's prayer requests an equitable trust and equitable liens.
24 These requests do not constitute the assertion of a property
25 interest. The California courts have consistently held that actions

1 to impose equitable remedies would not qualify as "property
2 interests" for the purposes of recording a notice of lis pendens.
3 In Urez Corp. v Superior Court (1987) 190 C.A.3d 1141, 1149, 235
4 C.R. 837, the court said:

5 "Allegations of equitable remedies, even if colorable,
6 will not support a lis pendens if, ultimately, those
7 allegations act only as a collateral means to collect
8 money damages. It must be borne in mind that the true
9 purpose of the lis pendens statute is to provide notice
10 of pending litigation and not to make plaintiffs secured
11 creditors of defendants nor to provide plaintiffs with
12 additional leverage for negotiating purposes."

13 La Paglia v. Superior Court (1989) 215 CA3d 1322, 264 CR 63 was an
14 action to impose a constructive trust on real property in which the
15 court determined that it was not an action affecting title to or
16 the right of possession of the property for purposes of recording
17 a lis pendens against it. Accordingly, in an action to impose a
18 constructive trust on a parcel of real property which was purchased
19 with funds allegedly wrongfully withheld from plaintiff's
20 predecessor in interest under a mining lease, the owner of the
21 parcel was entitled to expungement of a notice of lis pendens
22 recorded against the property by plaintiff. Wardley Development,
23 Inc. v. Superior Court (1989) 213 CA3d 391, 262 CR 87 was a
24 judgment creditor's action seeking to establish an equitable lien
25 interest against certain real property as a collateral means of
26 collecting money damages against a judgment debtor who had

1 allegedly fraudulently transferred funds traceable to the purchase
2 of the property. The court stated that the action was not an action
3 affecting title or possession of the real property within the
4 meaning of the code and thus did not support the filing of a lis
5 pendens. Further, that a lis pendens notice is not intended to
6 hinder alienability of real property during the pendency of an
7 action when the property is sought solely as a res to secure
8 payment of money damages. Thus, despite the creditor's allegation
9 that funds fraudulently transferred by the debtor to the owner of
10 the property could be traced to the purchase of the property, the
11 owner was entitled to an order expunging the notice of lis pendens.

12 **V. THE REMEDY FOR A WRONGFULLY RECORDED**
13 **LIS PENDENS NOTICE IS TO EXPUNGE IT**

14 Code of Civil Procedure Section 405.31 provides the following:

15 "In proceedings under this chapter, **the court shall order**
16 **the notice expunged if the court finds that the pleading**
17 **on which the notice is based does not contain a real**
18 **property claim.** The court shall not order an undertaking
19 to be given as a condition of expunging the notice where
20 the court finds the pleading does not contain a real
21 property claim." Emphasis added.

22 **VI. PLAINTIFF FAILED TO PROPERLY SERVE SOLINA WALTON**

23 Civil Code Section 405.22 states, in relevant part,
24 "...the claimant shall, prior to recordation of the
25 notice, cause a copy of the notice to be mailed, by

1 registered or certified mail, return receipt requested,
2 to all known addresses of the parties to whom the real
3 property claim is adverse and to all owners of record of
4 the real property affected by the real property claim as
5 shown by the latest county assessment role or more recent
6 assessment information in the possession of the county
7 assessor..."

8 VII. EFFECT OF FAILURE TO PROPERLY SERVE NOTICE

9 The effect of the failure to properly serve the notice is
10 described in C.C.P. Section 405.23:

11 "Any notice of pendency of action shall be void and
12 invalid as to any adverse party or owner of record unless
13 the requirements of Section 405.22 are met for that party
14 or owner and a proof of service in the form and content
15 specified in Section 1013a has been recorded with the
16 notice of pendency of action."

17 As may be clearly seen from the proof of service filed by plaintiff
18 and attached to the notice on file herein, Solina Walton was not
19 served in any manner. The lis pendens should be declared null and
20 void and should be ordered expunged.

21 VIII. ATTORNEY'S FEES AND COSTS

22 C.C.P. Section 405.38 states:

23 "The court shall direct that the party prevailing on any
24 motion under this chapter be awarded the reasonable

1 attorney's fees and costs of making or opposing the
2 motion unless the court finds that the other party acted
3 with substantial justification or that other
4 circumstances make the imposition of attorney's fees and
5 costs unjust."

6 WHEREFORE, Solina Walton prays:

- 7 1. For an order expunging the Notice of Lis Pendens forthwith;
- 8 2. For reasonable attorney's fees;
- 9 3. For costs of suit incurred herein;
- 10 4. For such other and further relief as the court deems
11 proper.

12 Dated: October 20, 1993

13 JAMES R. LANGFORD III

14 DECLARATION OF JAMES R. LANGFORD III

15 I, James R. Langford III, declare under penalty of perjury
16 under the laws of the State of California that the following
17 recitation is true and correct.

18 (1) I am an attorney licensed to practice law before all the
19 courts of California and I represent SOLINA WALTON in this matter.

20 (2) On October 19, 1993, after reviewing the facts and the
21 recent Code of Civil Procedure relating to lis pendens, I
22 telephoned plaintiff's attorney, Andrew Wilson, to request that his
23 client withdraw the lis pendens it had recorded in this matter. I
24 was informed that neither Mr. Wilson (who signed the verified
25 complaint) nor Ms. Rajkowski (who signed the lis pendens) was

1 available. I left a message for each to return my call.

2 (3) The following day, I again telephoned Mr. Wilson at
3 approximately 1:25 P.M. I indicated to him my firm belief that the
4 facts of this case did not support the filing of a lis pendens and
5 I requested the it be withdrawn. Mr. Wilson requested that I supply
6 him with the legal authority on which I based my opinion. I
7 supplied that authority by letter transmitted by facsimile that
8 very afternoon. I also indicated that time was a critical factor
9 because of the fact that my client was about to lose a very
10 beneficial mortgage refinance. A copy of that letter is attached
11 hereto as Exhibit "B". In that letter, I provided a nighttime
12 telephone number where I could be reached. I did not hear from him
13 or anyone from his firm.

14 (4) The normal billing rate for myself or an attorney under
15 the supervision of my office is \$175 per hour. There has been 20
16 hours of attorney time expended on this motion to date for
17 conferences with the client and potential witnesses; review of
18 documents; review and analysis of the complaint and related
19 pleadings; research re: recent lis pendens statute;
20 telecommunications with plaintiff attorney/ defendant attorney;
21 correspondence to plaintiff attorney; facts investigation; document
22 preparation and revision. I expect that an additional two hours
23 will be incurred because of the court appearance. Attorneys fees in
24 the amount of \$3850 and costs of \$14 is reasonable and proper for
25 the bringing of this motion.

26 The facts hereinabove recited are personally known to me and

1 if called upon to testify, I could and would competently do so.

2 Dated: October 20, 1993

3 Place: Walnut Creek, CA

4
5

James R. Langford III

6 DECLARATION OF SOLINA WALTON

7 I, Solina Walton, declare under penalty of perjury under the
8 laws of the State of California that the following recitation is
9 true and correct.

10 (1) I am the record owner of the property which is the subject
11 of this lawsuit (hereinafter "PROPERTY") and on which a notice of
12 lis pendens has been recorded. I have been on record as an owner
13 since October 30, 1991. See Exhibit "A" attached hereto.

14 (2) I am not a party to the lawsuit nor have I been served
15 with notice of the lis pendens.

16 (3) Because of the low interest rates on home loan mortgages,
17 I began working on refinancing the PROPERTY in early July 1993 and
18 submitted the loan application in mid-July 1993.

19 (4) Escrow was opened on August 2, 1993 and the loan was
20 approved and the loan was approved in late August. The adjustable
21 loan rate was "locked in" in early September.

22 (5) I signed the final loan documents on Thursday, October 14,
23 1993 and I was told at that time that the loan would fund on the
24 following Monday and close on October 19, 1993. In late afternoon

1 of October 14, 1993, I was informed that the lender would not go
2 forward with the loan because of the notice of lis pendens recorded
3 by the plaintiff in this action.

4 (6) Through conversation with my husband, Michael Walton, I
5 was aware that a notice might have been or might, in the future, be
6 recorded against the property. I asked the loan officer to confirm
7 the recordation of such a notice on several occasions and was
8 informed that preliminary title checks did not disclose any
9 blemishes on the title. It was not until late in the afternoon of
10 October 14, 1993 that I knew for certain that a notice had been
11 recorded.

12 (7) I am fully prepared to go through with the loan refinance.
13 The lower interest rates will allow me to combine debt and still
14 pay approximately \$1425.74 less than I am currently paying in
15 monthly mortgage payments. It will also provide me with substantial
16 tax benefits. See the Declaration of J. Andrew Paulson attached
17 hereto as Exhibit "C".

18 (8) I have been informed by Mr. J. Andrew Paulson, the loan
19 broker agent with whom I have been working to obtain the loan that
20 the lender will only hold the loan "open" for a few days longer
21 before withdrawing it.

22 The facts hereinabove recited are personally known to me
23 and if called upon to testify, I could and would competently do so.

24 Dated: October 20, 1993

25 Place: San Anselmo, CA

26 _____
27 Solina Walton

JAMES R. LANGFORD III
CABAR # 97671
500 Ygnacio Rd., Suite 490
Walnut Creek, CA 94596
(510) 947-0100
Attorney For SOLINA WALTON

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF MARIN

CHURCH OF SCIENTOLOGY)
INTERNATIONAL, a California)
not-for-profit religious)
corporation,)

CASE NO. 157 680

Plaintiff,)

vs.)

ORDER EXPUNGING NOTICE OF
PENDENCY OF ACTION (LIS PENDENS)
AND FOR PAYMENT OF ATTORNEY FEES
AND COSTS

GERALD ARMSTRONG; MICHAEL)
WALTON; THE GERALD ARMSTRONG)
CORPORATION, a California for)
profit corporation; DOES 1)
through 100, inclusive,)

Date:
Time:
Location:
Trial Date:

Defendants.)

The motion of SOLINA WALTON for an order expunging notice of pendency of action (lis pendens) and for attorney fees and costs was heard on Oct 29, 1993, in Department 1 of the above-entitled Court before the Honorable_____. Plaintiff appeared/did not appear by and through its attorney; defendant Michael Walton appeared/did not appear In Pro Per, defendants Gerald Armstrong and the Gerald Armstrong Corporation appeared/did not appear by and through their attorney; intervenor, Solina Walton appeared/did not appear by and through her attorney.

The Court, having considered the evidence and points and authorities in support of and in opposition to the motion, and having heard argument from counsel, finds that the motion should be granted and that the notice of pendency of action (lis pendens)

recorded on August 5, 1993 in the office of the County Recorder of Marin County as instrument number 93-062800, and filed in the above-captioned action, should be expunged on the grounds that the within action does not affect title to or possession of specific real property or the use of an easement designated in the complaint; and the said lis pendens is therefore subject to expungement under the Code of Civil Procedure Section 405.31 and plaintiff has failed to establish the probable validity of the real property claim contained in the complaint by a preponderance of the evidence; and the said lis pendens is therefore subject to expungement under the Code of Civil Procedure Section 405.32; and that said notice of pendency of action (lis pendens) was defectively served and filed.

IT IS THEREFORE ORDERED THAT the notice of pendency of action (lis pendens) recorded on August 5, 1993 in the office of the County Recorder of Marin County as instrument number 93-062800 is hereby ordered expunged.

IT IS FURTHER ORDERED that plaintiff, Church of Scientology International, shall reimburse SOLINA WALTON the sum of \$_____ for attorneys fees and costs.

Dated:

Judge of the Superior Court

Order No.
Escrow No. 36428LB
Loan No.

RECORDED AT REQUEST OF
FIRST AMERICAN

91-069260

Rec
Check

Recorded
Official Record
County of
MARIN
JAMES DAL BON
Recorder
8:00am 30-Oct-91

WHEN RECORDED MAIL TO:

Mr. Michael Walton
707 Fawn Drive
San Anselmo, Ca. 94960

SPACE ABOVE THIS LINE FOR RECORDER'S USE

MAIL TAX STATEMENTS TO:

same as above

#177-122-17

NO CONSIDERATION-REALTH NOT SOLD
DOCUMENTARY TRANSFER TAX \$.....

..... Computed on the consideration or value of property conveyed; OR
..... Computed on the consideration or value less liens or encumbrances
remaining at time of sale.

per undersigned grantor
Signature of Declarant or Agent determining tax - Firm Name

GRANT DEED

FOR A VALUABLE CONSIDERATION, receipt of which is hereby acknowledged,
MICHAEL L. WALTON, a married man who acquired title as MICHAEL L. WALTON
an unmarried man.
hereby GRANT(S) to
MICHAEL L. WALTON AND SOLINA BEHBEHANI-WALTON, husband and wife as Joint Tenants.

the real property in the City of
County of Marin, State of California, described as

See legal description attached hereto and made a part hereof

Dated October 24, 1991

Michael L. Walton
MICHAEL L. WALTON

STATE OF CALIFORNIA } ss.
COUNTY OF Marin

On October 24, 1991

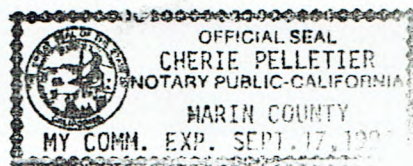
before me, the undersigned, a Notary Public in and for said State, personally appeared

Michael L. Walton

personally known to me (or proved to me on the basis of satisfactory evidence) to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same.

WITNESS my hand and official seal.

Signature *Cherie Pelletier*



(This area for official notarial)

DESCRIPTION

All that certain real property situate in the County of Marin, State of California, described as follows:

PARCEL ONE:

Parcel Two as shown upon that certain Parcel Map entitled, "Parcel Map Lands of California Land Title Portion Lands described in Book 2887 of Official Records, at Page 367, also being Portion of Lots 501 and 501-A, Unrecorded Map of Sleepy Hollow Acres, Vicinity of San Anselmo, Marin County California", filed for record April 8, 1976 in Volume 12 of Parcel Maps, at Page 43, Marin County Records.

EXCEPTING THEREFROM all that portion as described in the Deed from Fawn Partnership, a California Limited Partnership, to Alain Pigois, et ux, recorded February 27, 1989 as Recorder's Serial No. 89-11373, Marin County Records.

PARCEL TWO:

AN EASEMENT for ingress, egress and public utility purposes described as follows:

BEGINNING at a point on the centerline of Fawn Drive, said point being the most Southwesterly corner of Parcel 3, as shown upon that certain map entitled, "Parcel Map Lands of California Land Title Portion Lands described in Book 2887 of Official Records, at Page 367, also being a portion of Lots 501 and 501-A, unrecorded Map of Sleepy Hollow Acres, Vicinity of San Anselmo, Marin County, California", filed for record April 9, 1976 in Volume 12 of Parcel Maps, at Page 43, Marin County Records, said point also being the intersection of the calls "South 26° 20' East 135 feet and North 63° 40' East 20 feet" as contained in Parcel 2 of the Deed executed by California Land Title Company, a corporation, to Michael C. McGuckin, et ux, recorded March 26, 1976 in Book 3010 of Official Records, at Page 190, Marin County Records; thence from said point of beginning and along the exterior boundary of said Parcel 3, North 63° 40' East 20 feet; thence North 75° 07' 20" East 164.00 feet; thence leaving said exterior boundary of Parcel 3, North 12° 41' East 85.00 feet; thence North 18° 45' West 126.00 feet, thence North 13° 30' East 79.21 feet to the Northwesterly boundary of parcel 1, as shown upon that certain map referred to hereinabove; thence along the exterior boundary of said parcel 1, South 84° 00' West 75.70 feet to the most Northerly corner of the parcel of land described in the Deed executed by Charles B. Robertson, et ux, to Paul Hopkins Talbot, Jr., et ux, recorded January 30, 1956 in Book 1002 of Official Records, at Page 623, Marin County Records; thence continuing along said exterior boundary of Parcel One, South 21° 53' 30" East 111.77 feet; thence leaving said exterior boundary of Parcel 1, South 18° 45' East 95.06 feet, thence South 21° 48' West 70.66 feet; thence South 75° 07' 20" West 160.00 feet to the centerline of Fawn Drive; thence along the exterior boundary of said Parcel 3, also being the centerline of Fawn Drive, South 26° 20' East 24.46 feet to the point of beginning.

JAMES R. LANGFORD III
Attorney at Law
500 Ygnacio Valley Road, Suite 490
Walnut Creek, California 94596-3847
510/947-0100

October 20, 1993

Andrew H. Wilson, Esq.
Wilson, Ryan & Campilongo
235 Montgomery Street, Suite 450
San Francisco CA 94104

TRANSMITTED BY FACSIMILE
TO (415) 954-0938

Re: CSI v Armstrong, et.al.

Dear Mr. Wilson:

This will confirm our telephone conversation on this date wherein I advised that I represent Ms. Solina Walton, wife of defendant Michael Walton in the above-referenced matter.

As I explained, Ms. Walton is in the process of refinancing the family home. The refinance loan was scheduled to fund on Monday of this week and to close yesterday. The lender has refused to go forward as a result of the lis pendens your firm recorded against the property. Ms. Walton was informed of the lender's position last Thursday evening (October 14, 1993). By combining the current first and second mortgage payments, the monthly savings to Ms. Walton by this refinance is approximately \$1500 in addition to substantial tax savings. The lender will not wait very long for this matter to be resolved and it is my further understanding that the loan rate at which she is currently guaranteed is lower than the current market rate. As you may see, there is some urgency in this matter.

It is our position that the lis pendens is not appropriate in this litigation for money damages. I refer you to the new Civil Code Sections regarding these notices, specifically C.C.P. 405 et. seq. The Code provides at Section 405.4, " 'Real property claim' means the cause or causes of action in a pleading which would, if meritorious, affect (a) title to, or the right of possession of, specific real property or (b) the use of an easement identified in the pleading, other than an easement obtained pursuant to statute by any regulated public utility." Your client has no claim to title.

Even if your client is successful in obtaining judgments against all defendants, it would only obtain a money judgment and would not obtain title to or right of possession of the property and is, therefore, not entitled to employ the lis pendens.

While it is true that Plaintiff's prayer requests constructive trusts and liens, these requests do not constitute the assertion of a property interest. The California courts have

Page Two
October 20, 1993
Mr. Andrew Wilson

consistently held that actions to impose equitable liens and trusts are not property interest actions for purposes of employing the lis pendens notice.

In Urez Corp. v Superior Court (1987) 190 C.A.3d 1141, 1149, 235 C.R. 837, the court said:

Allegations of equitable remedies, even if colorable, will not support a lis pendens if, ultimately, those allegations act only as a collateral means to collect money damages. It must be borne in mind that the true purpose of the lis pendens statute is to provide notice of pending litigation and not to make plaintiffs secured creditors of defendants nor to provide plaintiffs with additional leverage for negotiating purposes.

La Paglia v. Superior Court (1989) 215 CA3d 1322, 264 CR 63 was an action to impose a constructive trust on real property and the court determined that it was not an action affecting title to or the right of possession of the property for purposes of recording a lis pendens against it. Accordingly, in an action to impose a constructive trust on a parcel of real property which was purchased with funds allegedly wrongfully withheld from plaintiff's predecessor in interest under a mining lease, the owner of the parcel was entitled to expungement of a notice of lis pendens recorded against the property by plaintiff.

Wardley Development, Inc. v. Superior Court (1989) 213 CA3d 391, 262 CR 87 was a judgment creditor's action seeking to establish an equitable lien interest against certain real property, as a collateral means of collecting money damages against a judgment debtor who had allegedly fraudulently transferred funds traceable to the purchase of the property. The court stated that the action was not an action affecting title or possession of the real property within the meaning of the code and thus did not support the filing of a lis pendens; a lis pendens notice is not intended to hinder alienability of real property during the pendency of an action when the property is sought solely as a res to secure payment of money damages. Thus, despite the creditor's allegation that funds fraudulently transferred by the debtor to the owner of the property could be traced to the purchase of the property, the owner was entitled to an order expunging the notice of lis pendens.

I believe that it is obvious that your client's complaint seeks money damages only and does not set forth a claim for right of title. The complaint references the setting aside of a fraudulent transfer. Any "setting aside" of the transfer would be between Armstrong and Walton. Scientology does not have a claim to title or possession. The lis pendens has slandered title and is daily costing Ms. Walton. Should she lose the opportunity to successfully conclude this refinance transaction, I am certain that she will look to your side of the fence for reparation. As you may know, C.C.P. Section 405.38 provides that attorney's fees and costs be awarded the prevailing party in a motion to expunge.

Page Three
October 20, 1993
Andrew Wilson

Unfortunately we cannot wait for your client to voluntarily withdraw the notice. We must move forward with all due haste. It is for that reason that I notified you of the application for order shortening time set for tomorrow at 9:30 A.M.

If I do not hear from you today, I must assume that you have chosen not to withdraw the lis pendens. I may be reached this evening by voice system at (510) 672-2112.

Thanking you in advance for your anticipated cooperation in this matter, I am,

Very truly yours,

James R. Langford III

cc: Laurie Bartilson

FIRST SECURITY FINANCIAL SERVICES

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OCTOBER 20, 1993

JAMES LANGFORD
ATTORNEY AT LAW
500 YGNACIO VALLEY RD., STE. 500
WALNUT CREEK, CA 94596

DECLARATION RE: MICHAEL & SOLINA WALTON

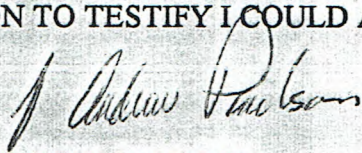
THIS DECLARATION IS WRITTEN TO CLARIFY THE WORK IN PROGRESS FOR MR. & MRS. WALTON.

I STARTED WORKING ON THIS REFINANCE IN EARLY JULY AND MET WITH MRS. WALTON ON 07/16/93 TO FILL OUT THE LOAN APPLICATION. THE FIRST APPRAISAL WAS PERFORMED ON 07/19/93, THE SECOND WAS PERFORMED SHORTLY THEREAFTER. ESCROW WAS OPENED ON 08/02/93 AND THE LOAN WAS APPROVED IN LATE AUGUST AND THE RATE WAS LOCKED IN EARLY SEPTEMBER. LOAN DOCUMENTS ARE SIGNED AND THE LOAN SHOULD HAVE CLOSED 10/19/93.

THE TRANSACTION IS STALLED DUE TO THE RECORDATION OF A LIS PENDENS AND THE WALTONS ARE NOT ABLE TO MOVE FORWARD AT THIS TIME. THE MONTHLY SAVINGS TO THE WALTONS ARE APPROXIMATELY \$1425.74 IN ADDITION TO A SUBSTANTIAL TAX SAVINGS.

THE DOCUMENTATION I HAVE PREPARED IS DATED AND THE LENDER WILL ONLY HONOR THE APPROVAL FOR A SHORT PERIOD OF TIME. IF THE WALTONS ARE TO BENEFIT FROM THIS REFINANCE THE LIS PENDENS MUST BE REMOVED IMMEDIATELY.

I J. ANDREW PAULSON DECLARE UNDER PENALTY OF PERJURY, UNDER THE LAWS OF THE STATE OF CALIFORNIA, THAT THE FACTS HEREINABOVE RECITED ARE TRUE AND CORRECT AND ARE PERSONALLY KNOWN TO ME. IF CALLED UPON TO TESTIFY I COULD AND WOULD COMPETENTLY DO SO.



J. ANDREW PAULSON
10/20/93 SAN RAFAEL, CA